

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OSCAR NOE ORTIZ GOMEZ,
Plaintiff,

v.

MOISES BECERRA, et al.,
Defendants.

Case No. 23-cv-03724-JCS

ORDER TO SHOW CAUSE

Petitioner Oscar Noe Ortiz Gomez was born in El Salvador and has lived in the United States since he was approximately eighteen years old. He is currently under Respondents' legal custody at Mesa Verde ICE Processing Facility in Bakersfield, California. He has been incarcerated by ICE without any bond hearing, under 8 U.S.C. § 1226(c), since December 2, 2021. On March 14, 2023, the Immigration Judge found that Oscar is likely to be tortured if he is removed to El Salvador, and granted him deferral of removal under the Convention Against Torture. Petitioner requests the Court issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241(c)(3) ordering his immediately release from physical custody; or in the alternative, ordering a prompt hearing before this Court to determine the facts, as described in 28 U.S.C. § 2243, and requiring that Respondents establish the necessity of further detention by clear and convincing evidence.

The Court may entertain a petition for writ of habeas corpus from a person claiming to be "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). A district court considering an application for a writ of habeas corpus shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Petitioner alleges that his indefinite detention violates his constitutional and

1 statutory rights, including his right to a bond hearing. When liberally construed, the petition states
2 cognizable claims.

3 Accordingly, IT IS HEREBY ORDERED as follows:

4 (1) The clerk will serve a copy of this order, the petition and all attachments to the petition
5 upon Respondent and Respondent's attorney, the United States Attorney for the Northern District
6 of California. The clerk also will send by mail a copy of the petition to the Attorney General
7 of the United States in Washington, D.C. The clerk also will serve by mail a copy of this order to
8 the petitioner.

9 (2) Respondent must file and serve upon Petitioner, on or before **August 25, 2023**, an
10 answer responding to the allegations of the petition and showing cause why a writ of habeas
11 corpus should not be issued. Respondent must file with the answer a copy of all documents that
12 are relevant to a determination of the issues presented by the petition.

13 (3) If Petitioner wishes to respond to the answer, he must do so by filing a traverse and
14 serving it on Respondent on or before **September 8, 2023**.

15 (4) In lieu of an answer, Respondents may file, on or before **August 25, 2023**, a motion to
16 dismiss on procedural grounds. If Respondents file such a motion, Petitioner shall file with the
17 Court and serve on Respondents an opposition or statement of non-opposition within thirty (30)
18 days of the date the motion is filed, and Respondents shall file with the Court and serve on
19 Petitioner a reply within fifteen (15) days of the date any opposition is filed.

20 (5) Petitioner is responsible for prosecuting this case. Petitioner must promptly keep the
21 Court informed of any change of address and must comply with the Court's orders in a timely
22 fashion. Petitioner is cautioned that he must include the case name and case number for this case
23 on any document he files in this case.

24 **IT IS SO ORDERED.**

25 Dated: July 27, 2023

26 
27 JOSEPH C. SPERO
28 United States Magistrate Judge